

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
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)	
AT&T Inc. Petition for Waiver of Section)	WCB/Pricing File No. 09-05
61.42(g) of the Commission's Rules)	
)	
)	

ORDER

Adopted: June 4, 2009

Released: June 4, 2009

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. AT&T Inc. (AT&T) filed a petition on March 31, 2009, seeking a limited waiver of section 61.42(g) of the Commission's rules to exclude its True IP to PSTN (TIPToP) service from any price cap basket in the upcoming 2009 annual access tariff filing.¹ For the reasons explained below, we grant AT&T the requested waiver for purposes of the 2009 annual access tariff filing.

II. BACKGROUND

2. AT&T has requested a limited waiver of section 61.42(g) of the Commission's rules so that it may exclude its TIPToP service from any price cap basket for purposes of the 2009 annual access tariff filing.² AT&T states that TIPToP provides Internet Protocol Voice Information Service Providers (IP-VIS Providers) with connectivity to the AT&T network.³ The service includes "one-way or two-way port interfaces that provide trunking and switching components in a single, easy to use, time division multiplexed interface."⁴ This interface provides connectivity to "AT&T users and to non-AT&T users that are subtended by AT&T's access tandems."⁵

¹ AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules and Request for Expedited Treatment, WCB/Pricing File No. 09-05, at 1-2 (filed Mar. 31, 2009) (AT&T Petition). AT&T filed the petition on behalf of Pacific Bell Telephone Company, Southwestern Bell Telephone Company, the Ameritech Operating Companies, the Southern New England Telephone Company, and Nevada Bell Telephone Company. *Id.* at 1. *See* 47 C.F.R. §§ 61.42(g) (new services must be included in the annual price cap filing in the year after the one in which they are introduced), 61.43 (annual price cap filing requirements).

² AT&T Petition at 1-2. The Wireline Competition Bureau (Bureau) issued a public notice seeking comment on AT&T's petition. *See Comments Sought on AT&T Petition For Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 09-05, Public Notice, DA 09-911 (Wireline Comp. Bur. rel. Apr. 24, 2009). No comments were filed in this proceeding.

³ AT&T Petition at 1.

⁴ *Id.* at 2.

⁵ *Id.*

3. TIPToP first was tariffed in November 2004 and therefore should have been included in the appropriate price cap basket in the 2005 annual access filing.⁶ SBC Services Inc. (now part of AT&T) requested a waiver to exclude TIPToP from price caps in the 2005 annual access tariff filing, and the Bureau granted the waiver on June 6, 2005.⁷ In subsequent years, AT&T requested a waiver to exclude TIPToP from price caps in its annual access tariff filings, and the Bureau granted these waivers in 2006, 2007, and 2008.⁸ Absent an additional waiver, AT&T would be required to include TIPToP in the appropriate price cap basket in the 2009 annual access tariff filing.⁹

III. DISCUSSION

4. The Commission may waive its regulations for good cause shown.¹⁰ In general, the waiver request must demonstrate special circumstances warranting a deviation from the general rule and that such a deviation will serve the public interest.¹¹ As we did in prior years and for similar reasons, we find that good cause exists to grant AT&T a limited waiver of section 61.42(g) for TIPToP service for purposes of the 2009 annual access tariff filing. We agree with AT&T that special circumstances exist due to the nature of the service and the limited demand for that service.¹² In particular, we agree that TIPToP does not fit squarely within the price cap structure because it appears to include both traffic-sensitive and trunking elements and that a waiver would preserve the *status quo* until the Commission determines the appropriate treatment of the service under the price cap regime.¹³ The Commission is considering the appropriate regulatory treatment of IP-based services, including the intercarrier compensation rules that apply to IP-originated traffic, in a number of open proceedings.¹⁴ The requested waiver will serve the public interest by permitting the Commission to address the appropriate regulatory treatment of IP-originated traffic in a more comprehensive manner before addressing more detailed issues, such as the appropriate price cap baskets within which particular new services should be placed.

⁶ *Id.* at 2; see 47 C.F.R. § 61.42(g).

⁷ See *SBC Services Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 05-24, Order, 20 FCC Rcd 10102 (Wireline Comp. Bur. 2005).

⁸ See *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 06-18, Order, 21 FCC Rcd 5968 (Wireline Comp. Bur. 2006); *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 07-2043, Order, 22 FCC Rcd 8666 (Wireline Comp. Bur. 2007); *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 08-11, Order, 23 FCC Rcd 8313 (Wireline Comp. Bur. 2008).

⁹ AT&T Petition at 2; 47 C.F.R. § 61.42(g).

¹⁰ 47 C.F.R. § 1.3.

¹¹ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

¹² AT&T explains that this service is not currently purchased by any unaffiliated customers. AT&T Petition at 3.

¹³ *Id.*

¹⁴ See, e.g., *See High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, CC Docket Nos. 01-92, 99-200, 99-68, 96-98, 96-45, WC Docket Nos. 06-122, 05-337, 04-36, 03-109, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, FCC 08-262, Apps. A, C (rel. Nov. 5, 2008); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd at 4685 (2005); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

5. In granting this waiver, we note that continued regulatory oversight over TIPToP service will allow the Bureau to address any discriminatory or anti-competitive pricing that might occur. AT&T's TIPToP rates are subject to Part 61, subparts E and F of the Commission's rules, which provide protection against unreasonable rate increases.¹⁵ These rules require AT&T to justify any rate increases it seeks for its TIPToP service by providing cost and other supporting data in the tariff review process.¹⁶ Moreover, excluding TIPToP from price cap baskets in the 2009 annual filing would not affect any price cap rates.¹⁷ Thus, although TIPToP will remain outside of price cap regulation under the limited waiver granted here, we find that regulation pursuant to our Part 61 rules is sufficient to address any potential issues that may arise concerning the effects of the waiver on the 2009 annual filing.

IV. ORDERING CLAUSE

6. Accordingly, IT IS ORDERED that, pursuant to sections 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 61.42(g) of the Commission's rules IS WAIVED for TIPToP service offered by AT&T with respect to AT&T's 2009 annual access tariff filing requirements under section 61.43 of the Commission's rules, 47 C.F.R. §§ 61.42(g), 61.43.

FEDERAL COMMUNICATIONS COMMISSION

Albert M. Lewis
Chief, Pricing Policy Division
Wireline Competition Bureau

¹⁵ See 47 C.F.R. Part 61, Subparts E & F.

¹⁶ *Id.*

¹⁷ See 47 C.F.R. §§ 61.47(a), (b) (describing service band index adjustments that are not required because TIPToP service will not be included in any price cap basket).